

REMARKS/ARGUMENTS

Initially, Applicants wish to thank the Examiner for considering the materials cited in the Information Disclosure Statement filed in the present patent application on February 16, 2007, April 2, 2007, and December 23, 2008 by the return of the signed copies of the Form PTO-1449 attached to the Official Action.

Applicants note that Form PTOL-326 does not provide an acknowledgement of Applicants' claims for foreign priority. Thus, Applicants respectfully request that the Examiner acknowledge Applicants' claim for foreign priority, and acknowledge that copies of the certified priority documents have been received in this National Stage application from the International Bureau, in the next Official communication.

Additionally, Applicants note that Form PTOL-326 also does not provide an indication regarding the acceptability of the drawings. Since Applicants believe that the drawing are acceptable, Applicants will proceed accordingly unless an indication otherwise is provided in the next Official communication.

In the Official Action, Claims 1-11 and 13-34 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-11 and 13-34 were rejected under 35 U.S.C. § 102(e) as being anticipated by SARFATI (U.S. Patent No. 6,970,960 B1).

Upon entry of the present amendment, claims 1-11 and 13-34 have been amended. Claim 12 was previously cancelled. Thus, claims 1-11 and 13-34 are currently pending for consideration by the Examiner.

In the Official Action, Claims 1-11 and 13-34 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. However, the Official Action has not provided any specific reasoning as to why these claims are believed to be non-statutory, with the exception

of recording medium claims 28, and 30-32. Nevertheless, in order to expedite the prosecution of the present patent application to allowance, the present amendment has amended each of the independent claims to address the above-cited rejection.

The present amendment amends each of independent apparatus claims 1, 16, 22, and 23 to explicitly recite an apparatus that includes specific machine features, including a processor and a storage. Thus, Applicants respectfully submit that apparatus claims 1-11 and 13-26 fall squarely into the “machine” statutory category of invention under 35 U.S.C. § 101. Applicants further submit that each of these claims recite a specific machine, and are not directed to an abstract idea. Accordingly, Applicants respectfully request that the rejection of apparatus claims 1-11 and 13-26 under 35 U.S.C. § 101 be withdrawn.

The present amendment also amends each of independent method claims 27, 29, 31, and 33 to explicitly recite machine features, such as a processor and a storage, that impose meaningful limits on the execution of each of these independent method claims. Thus, Applicants respectfully submit that independent method claims 27, 29, 31, and 33 fall squarely into the “process” statutory category of invention under 35 U.S.C. § 101. Applicants further submit that these claims are tied to a particular machine, and are not directed to an abstract idea. Accordingly, Applicants respectfully request that the rejection of independent method claims 27, 29, 31, and 33 under 35 U.S.C. § 101 be withdrawn.

The present amendment further amends the preambles of each of independent recording medium claims 28, 30, 32, and 34, to clarify that these claims are directed to “(a) non-transitory recording medium...”, which is regarded by the USPTO as being directed to statutory subject matter. Accordingly, Applicants respectfully request that the rejection of independent “non-transitory” storage medium claims 27, 29, 31, and 33 under 35 U.S.C. § 101 be withdrawn.

In summary, Applicants respectfully submit that each of amended claims 1-11 and 13-34 are directed to statutory subject matter. Accordingly, Applicants respectfully request that the rejection of claims 1-11 and 13-34 under 35 U.S.C. § 101 be withdrawn.

Claims 1-11 and 13-34 were also rejected under 35 U.S.C. § 102(e) as being anticipated by SARFATI. Applicants respectfully traverse the rejection of claims 1-11 and 13-34 under 35 U.S.C. § 102(e) as being anticipated by SARFATI. Applicants submit that amended claims 1-11 and 13-34 are not anticipated by SARFATI, since SARFATI fails to disclose each and every feature recited therein.

With regard to each of the independent claims 1, 16, 22-23, and 27-34, the Official Action asserts that SARFATI discloses all of the features recited therein, primarily citing SARFATI's Figures 13A-13B (together with the corresponding description); column 2, lines 32-52; and column 5, lines 30-67. With regard to amended independent claim 1, Applicants submit that SARFATI does not disclose: a second program selector operable to select, as a program to be executed, a program that is of the same type as the currently executed program, in the case where abnormal termination of the currently executed program is detected by said program monitor (emphasis added), which is explicitly recited in amended independent claim 1.

In distinct contrast, Applicants submit that the cited section (column 5, lines 30-67) of SARFATI discloses an entirely different apparatus, wherein the downloading of software data is aborted prior to erasing the resident software data, when it is determined that the data version identification of the received software data is the same as that of the stored resident software data. Among the several distinctions present in the above-cited features of amended independent claim 1 is that the “downloading” of the software is not the same as the “execution” of the software.

Thus, Applicants submit that SARFATI fails to anticipate independent claim 1, for at least the reason that SARFATI does not disclose each and every feature recited in amended independent claim 1, including the second program selector that selects a second program to be executed that is of the same type as the first currently executed program, when abnormal termination of the currently executed first program is detected.

Additionally, Applicants respectfully submit that SARFATI fails to anticipate amended independent claims 16, 22-23, and 27-34, for reasons similar to the reasons discussed above regarding amended independent claim 1, since amended independent claims 16, 22-23, and 27-34 each recited features similar to the features discussed above regarding amended independent claim 1.

Furthermore, Applicants respectfully submit that dependent claims 2-11 and 13-26, which depend from amended independent claim 1, and dependent claims 17-21, which depend from amended independent claim 16, are also patentable for at least the reasons discussed above, and further for the additional features recited therein.

Accordingly, Applicants respectfully request that the rejection of claims 1-11 and 13-34 under 35 U.S.C. § 102(e) as being anticipated by SARFATI be withdrawn.

In conclusion, Applicant respectfully submit that amended claims 1-11 and 13-34 recite statutory subject matter, and are not anticipated by SARFATI. Thus, Applicants respectfully submit that amended claims 1-11 and 13-24 are in condition for allowance. Accordingly, Applicants respectfully request that an indication of the allowability of claims 1-11 and 13-34 be provided in the next Official communication.

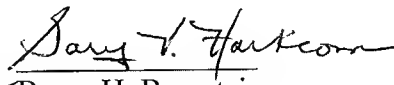
SUMMARY

From the amendments and remarks provided above, Applicants respectfully submit that all of the pending claims in the present patent application are patentable over the references cited by the Examiner, either alone or in combination. Accordingly, reconsideration of the outstanding Official Action is respectfully requested, and an indication of allowance of claims 1-11 and 13-34 is now believed to be appropriate.

Applicants note that this amendment is being made to advance prosecution of the application to allowance, and should not be considered as surrendering equivalents of the territory between the claims prior to the present amendment and the amended claims. Further, no acquiescence as to the propriety of the Examiner's rejections is made by the present amendment. All other amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should there be any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
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